

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company,
Commonwealth Electric Company
Cambridge Electric Light Company d/b/a
NSTAR Electric

)
)
)
)
)

D.T.E. 01-71A

**BRIEF OF BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, CAMBRIDGE ELECTRIC LIGHT
COMPANY d/b/a NSTAR ELECTRIC COMPANY**

Submitted by:

Cheryl M. Kimball, Esq.
Robert J. Keegan, Esq.
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, MA 02110
(617) 951-1400

Dated: February 6, 2002

Boston Edison Company,)
Commonwealth Electric Company)
Cambridge Electric Light Company d/b/a)
NSTAR Electric)

D.T.E. 01-71A

**INITIAL BRIEF OF BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, CAMBRIDGE ELECTRIC LIGHT
COMPANY d/b/a NSTAR ELECTRIC COMPANY**

I. INTRODUCTION

On December 6, 2001, the Department of Telecommunications and Energy (the “Department”) issued a Procedural Order establishing the process by which the Department would investigate the October 29, 2001 filing made by Boston Edison Company (“Boston Edison”), Commonwealth Electric Company (“Commonwealth”) and Cambridge Electric Light Company (“Cambridge”) (collectively, NSTAR Electric or the “Company”), relating to the calculation of service-quality penalties for the performance periods of September 1, 1999 through August 31, 2000, and September 1, 2000 through August 31, 2001. This investigation was docketed as D.T.E. 01-71A.

In its Procedural Order, the Department stated that this phase of the investigation (D.T.E. 01-71A) would focus on: (1) whether NSTAR Electric has met the service-quality thresholds established by the Department in Service Quality Standards, D.T.E. 99-84 (2001) (“D.T.E. 99-84”), beginning September 1, 1999, and (2) if not, what penalties should be imposed by the Department. As discussed below, the penalty calculations submitted to the Department in this proceeding for the 12-month performance periods ending August 31, 2000 and August 31, 2001

are accurate and consistent with the service-quality guidelines established by the Department in D.T.E. 99-84.¹

In addition, the Office of the Attorney General (the “Attorney General”) and the Division of Energy Resources (“DOER”) filed a joint set of comments in both this docket and in NSTAR Electric, D.T.E. 01-65 on January 30, 2002. In those comments, the Attorney General and DOER make three claims: (1) that, based on the Company’s Reliability Report and the independent assessment performed by ABB Consulting submitted in D.T.E. 01-65, the Company has failed to properly manage, operate, and maintain its distribution system; (2) that the Company’s actions should result in the assessment a \$22.5 million service-quality penalty, representing the maximum penalty allowed for the two twelve-month service-quality reporting periods under consideration in this docket; and (3) that the Department order the Company to undertake a management audit. The joint comments submitted by the Attorney General and DOER significantly mischaracterize and take out of context the findings of the Company’s internal and external assessments and provide no basis for a finding by the Department of management imprudence or for the imposition of a management audit.² In addition, there is no legal basis for the Department to impose the \$22.5 million penalty sought by the Attorney General and DOER for the two performance periods ending August 31, 2000 and August 31, 2001. Accordingly, the Department should assess the service-quality penalties calculated in

¹ During the course of the proceeding, the Company recalculated certain performance benchmarks and penalties, which are detailed below. The final calculation of performance benchmarks, standard deviations and credits/penalties for the two performance periods under consideration in this docket is set forth in Exhibit NSTAR-3 (supplement), which was filed with the Department on this date.

² The question of whether the Company acted “imprudently” is beyond the scope of this proceeding, and therefore, the Company will respond to this and related issues raised by the Attorney General and DOER in the context of D.T.E. 01-65.

accordance with the D.T.E. 99-84 guidelines for the two twelve month reporting periods, as described herein.

I. PROCEDURAL HISTORY

On June 29, 2001, the Department issued its final order in D.T.E. 99-84. In that decision, the Department directed NSTAR Electric and NSTAR Gas Company (together, “NSTAR”) to file a service-quality plan in compliance with the newly established guidelines and to file that plan with the Department no later than October 29, 2001. D.T.E. 99-84, at 41. On August 22, 2001, the Department directed NSTAR to file service-quality performance results for the two reporting periods of September 1, 1999 through August 31, 2000, and September 1, 2000 through August 31, 2001.³ Letter to NSTAR from Paul G. Afonso at 1-2. The Department also stated that the performance report for the two 12-month post-merger reporting periods “must contain the penalty calculations, as applicable, to comply with the directives set forth in [D.T.E. 99-84].” *Id.* at 2.

On August 24, 2001, in response to a number of electric outages on the NSTAR Electric system and other electric-distribution systems serving customers in Massachusetts, the Department opened an investigation into the service quality provided by electric companies, including NSTAR. For NSTAR Electric, the investigation was docketed as D.T.E. 01-65. In a letter to NSTAR Electric prior to commencing the investigation, the Department directed the Company to: (1) perform an examination of the operational or physical plant difficulties underlying the electricity outages on the Company’s distribution system; and (2) develop a plan to reduce or, where feasible, eliminate the risk of recurrence. Letter to Thomas May, August 10,

³ In the August 22, 2001 letter, the Department directed NSTAR to file service-quality plans for NSTAR Gas Company as well as the three electric companies. In this docket (D.T.E. 01-71A), NSTAR has provided all of the calculations and historical data for NSTAR Gas, although the proceeding is officially docketed as pertaining to NSTAR Electric.

2001. The Department also recommended that the electric companies engage outside consultants to assist in the system assessment and directed the filing a comprehensive report with the Department on October 29, 2001. Id.

On September 7, 2001, the Department opened a second investigation into the quality of electric service provided by electric distribution companies. For NSTAR Electric, this proceeding was docketed as Investigation into the Quality of Electric Service, D.T.E. 01-71. The Department stated that this investigation would include, but would not be limited to, a review of the service-quality plan to be filed by NSTAR pursuant to the Department's June 29, 2001 decision in D.T.E. 99-84, and that the investigation would determine whether that plan complies with the D.T.E. 99-84 guidelines, which were established by the Department pursuant to the authority granted in G.L. c. 164, § 1E. Order Commencing Investigation, D.T.E. 01-71, at 1. In addition, the Department stated that it would consider its directives in D.T.E. 99-19 as a basis for applying SQ penalties for the period between the consummation of the merger and the start of statutory penalties established pursuant to D.T.E. 99-84. Id. at 1-2.

Therefore, on October 29, 2001, the Company submitted the following three filings in accordance with the Department's directives: (1) a report on the Company's internal self-assessment and independent audits, which were performed to evaluate the Company's service-quality performance drivers (the "Reliability Report"); (2) a calculation of penalties using the D.T.E. 99-84 methodology applied to the Company's service-quality performance for the two performance periods ending August 31, 2000 and August 31, 2001; and (3) a proposed Service Quality Plan (the "SQ Plan"), developed consistent with the D.T.E. 99-84 standards, to apply to the Company's operations on a going-forward basis.

On November 8, 2001, the Department issued an Order of Notice in NSTAR Electric, D.T.E. 01-71A, establishing a schedule of public hearings to consider the Company's calculation of penalties for the two performance periods ending August 30, 2000 and August 31, 2001 and to receive comment on the Company's Reliability Report, filed in D.T.E. 01-65. In accordance with the hearing schedule, the Department conducted public hearings in Stoneham and Brookline, Massachusetts on November 26, 2001. On November 27, 2001, the Department conducted public hearings in New Bedford and Boston, Massachusetts. On November 28, 2001, the Department conducted public hearings in Medfield and Hyannis, Massachusetts, and on November 29, 2001, the Department conducted a public hearing in Arlington, Massachusetts.⁴

On December 5, 2001, the Department approved the going-forward SQ Plans for NSTAR in D.T.E. 01-71. In approving those plans, the Department found that NSTAR's SQ Plans incorporated the Department's service-quality guidelines and the directives set forth in D.T.E. 99-84. Letter to Robert J. Keegan (December 5, 2001). The Department also indicated that the SQ Plans would receive further review in a later stage of the proceeding in D.T.E. 01-71. Id.

On December 6, 2001, the Department issued a Procedural Order in D.T.E. 01-71A. In its Procedural Order, the Department set out a schedule for its investigation into the penalty calculations submitted by the Company on October 29, 2001 for the post-merger performance periods of September 1, 1999 through August 31, 2000, and September 1, 2000 through August 31, 2001. In accordance with procedural schedule, the Company submitted prefiled testimony on December 14, 2001. The Company also responded to 38 information requests issued by the Department and the Office of the Attorney General (the "Attorney General").⁵ The Department

⁴ The Department conducted an additional public hearing in D.T.E. 01-65 at its offices on January 17, 2002.

⁵ On December 10, 2001, the Hearing Officer granted intervention status to the Office of the Attorney General (the "Attorney General") and the Utility Workers Union of America ("UWUA").

conducted an evidentiary hearing at its offices on January 22, 2002, and subsequent to the hearings, the Company responded to 21 record requests.⁶

II. THE COMPANY'S PENALTY CALCULATIONS FOR THE TWO PERFORMANCE PERIODS ENDING AUGUST 31, 2000 AND AUGUST 31, 2001 ARE ACCURATE AND IN ACCORDANCE WITH THE DEPARTMENT'S SQI GUIDELINES

A. Background

In Boston Edison-Commonwealth, D.T.E. 99-19 (2000), the Department approved a rate plan for NSTAR pursuant to G.L. c. 164, § 94, in conjunction with the merger of Commonwealth Energy System and BEC Energy. As part of the rate plan, NSTAR submitted a service-quality plan that included performance benchmarks based on historical performance. D.T.E. 99-19, at 94. In approving the service-quality plan, the Department made a number of changes to the design of NSTAR's plan and stated that it intended to open a proceeding (D.T.E. 99-84) to consider, on a generic basis, issues relating to service-quality plans associated with the Department's authority under G.L. c. 164, § 1E. Id. at 101-102.

On August 22, 2001, the Department directed NSTAR to file service-quality performance results for the two 12-month reporting periods beginning September 1, 1999 and September 1, 2000, noting that the BEC/Commonwealth Energy merger was consummated on August 25, 1999. Letter to NSTAR Electric from Paul G. Afonso at 1. The Department stated that the performance report for the two post-merger reporting periods "must contain the penalty

⁶ On January 24, 2002, the UWUA filed an Appeal of the Hearing Officer's Evidentiary Rulings on Scope or, in the Alternative, Motion for Clarification on Scope and Schedule in relation to a ruling that the Hearing Officer made as to the scope of the D.T.E. 01-71A proceeding. On January 25, 2002, the Attorney General's office filed a Motion to Compel Discovery that also related to the Hearing Officer's ruling on scope. On January 31, 2002, the Company filed a response to both of these motions.

calculations, as applicable, to comply with the directives set forth in [D.T.E. 99-84].”⁷ Id. at 2.

On October 29, 2001, the Company filed service-quality performance results for the two reporting periods of September 1, 1999 through August 31, 2000, and September 1, 2000 through August 31, 2001.

B. The Company’s Filing Establishes Historical Benchmarks and Performance Measures Consistent with the D.T.E. 99-84 Guidelines.

In D.T.E. 99-84, the Department established eight service-quality performance measures that would be subject to the penalty mechanism. For each of these measures, gas and electric companies must: (1) track and report data on each measure to the Department (see e.g., D.T.E. 99-84, at 5-6); (2) calculate performance benchmarks based on 10 years worth of historical data (5 years for SAIDI/SAIFI), or the maximum number of years of data available, so long as three years of data are available (id. at 3-4; D.T.E. 99-84 Guidelines, Section I.C); and (3) compare annual performance data to the established benchmarks for the purpose of calculating penalties or offsets in accordance with the Department’s penalty formula (D.T.E. 99-84 Guidelines, Section VII.A). As discussed below, the record in this proceeding shows that NSTAR has met each of these requirements.

Specifically, NSTAR has provided historical data where available for each of the eight performance measures identified by the Department as being associated with a penalty mechanism (see e.g., Exhibits NSTAR-2, Appendix C; NSTAR-3 (supplement), Appendix C; RR-AG-4; RR-AG-8; RR-AG-15). Second, NSTAR has calculated benchmarks based on the

⁷ The service-quality plan approved by the Department in D.T.E. 99-19 did not include a penalty mechanism. D.T.E. 99-19, at 106. The Department directed the Company to file a proposal for a penalty mechanism within six months of the date of the merger, which occurred on August 23, 1999. Id. at 7. On February 23, 2000, NSTAR wrote to the Department to request that outstanding issues relating to the service-quality plan be deferred pending the completion of the generic proceeding or the receipt of further guidance from the Department. See Exhibit NSTAR-2, at 2. The Department issued no further direction to the Company prior to its issuance of D.T.E. 99-84, wherein the Department directed NSTAR to file a revised service-quality plan consistent with the guidelines no later than October 29, 2001. Id.; D.T.E. 99-84, at 41-42.

available historical data for each of those performance measures (id.).⁸ The record shows that the number of years of historical data available for each of these measures differs, and that, in accordance with the D.T.E. 99-84 guidelines, the benchmarks have been calculated using up to ten years of data, but not less than three years of data (Exhibit NSTAR-2, at 4-6). These performance measures are as follows: (1) Percentage of Calls Answered;⁹ (2) Percentage of Service Appointments Met;¹⁰ (3) Percentage of On-Cycle Meter Reads;¹¹ (4) Lost Work-Day Accident Rate; (5) System Average Interruption Duration Index (“SAIDI”); (6) System Average Interruption Frequency Index (“SAIFI”); (7) Consumer Division Cases; (8) Billing Adjustments; and (9) Percentage of Odor Calls Responded to In 60 Seconds or Less (for NSTAR Gas Company) (see Exhibit NSTAR-2, Appendix A; Exhibit NSTAR-3 (supplement), Appendix A).

The record also shows that, with respect to the calculation of benchmarks based on historical data, two changes must be incorporated in relation to the SAIDI/SAIFI and Call Answering benchmarks. First, subsequent to the Company’s filing on October 29, 2001, the Department requested a change in the definition of “operating area” in relation to the calculation

⁸ The record shows that, in D.T.E. 99-19, the Department established several performance benchmarks on the basis of historical data from which specific annual data had been excluded, or in some cases, on the basis of a single observation. Exhibit NSTAR-2, at 2-3. As a result, no penalty calculation is possible under the D.T.E. 99-84 penalty structure for certain performance measures because it is not possible to calculate a standard deviation on the basis of a single observation. Id. at 3. Accordingly, NSTAR applied all aspects of the D.T.E. 99-84 methodology to the calculation of penalties for the two 12-month reporting periods commencing September 1, 1999 and September 1, 2000, as if the Department’s guidelines were put into effect as of those dates. Id.

⁹ For Commonwealth and Cambridge, insufficient historical data (two years) was available to establish a benchmark to apply to the first performance period (ending August 31, 2000). Therefore, for these companies, performance benchmarks were established (based three-years data) to apply to the second performance period (ending August 31, 2001) (Exhibit NSTAR-2, Appendix B).

¹⁰ Prior to the issuance of the D.T.E. 99-84 guidelines, NSTAR did not measure the percentage of service appointments met as scheduled, although NSTAR Gas Company began tracking this measure in 2000. Thus, there are no historical data upon which a benchmark can be calculated to apply to the two performance periods ending August 31, 2000 and August 31, 2001 (Exhibit NSTAR-2, Appendix A).

of SAIDI and SAIFI statistics (RR-AG-4). Specifically, the Department redefined the term “operating area” to represent the entire service territory of a distribution company, which is inconsistent with the methodology that the Company has used historically to calculate SAIDI/SAIFI (id.). The record shows that, historically, Boston Edison and Commonwealth have calculated “excludable events” on a service-area basis for the purpose of compiling SAIDI/SAIFI statistics for each individual company (id.; Exhibit AG 1-21; RR-AG-3; RR-AG-5).¹² The record also shows that historical data on “excluded events” for the Boston Edison system is not available prior to 2000, and therefore, the Company does not have sufficient data (three years) to recalculate the benchmarks for the two performance periods ending August 31, 2001 (id.). Section VIII.B of the D.T.E. 99-84 guidelines provides that companies will use best efforts to standardize SAIDI/SAIFI historical data consistent with the methodology set forth in Section V, which reflects the new definition of “operating area.”¹³ Accordingly, the Company has properly calculated the SAIDI/SAIFI benchmarks as set forth in Exhibit NSTAR-2, Appendix B for Boston Edison and Cambridge based on the Company’s historical information.¹⁴

¹¹ For all of the NSTAR companies except Boston Edison, a performance benchmark for this measure was calculated to apply to the second performance period (ending August 31, 2001), based on three years of historical data. Boston Edison had sufficient historical data available to calculate a benchmark for the first performance period (ending August 31, 2000) (Exhibit NSTAR-2, Appendix A).

¹² In response to Record Request AG-3, the Company identified the five service areas for Boston Edison and the three service areas for Commonwealth. In that response, the Company noted that Cambridge was treated historically as a single service area.

¹³ The record also shows that the Company has instituted a dual-tracking system to collect SAIDI/SAIFI data in accordance with both the historical methodology (excluding outages affecting more than 15 percent of customers in a service area) and the Department’s system-wide methodology (RR-AG-4).

¹⁴ The Company has recalculated the historical benchmark for Commonwealth based on detailed data that was retained by Commonwealth documenting the “excludable events” by service area (Exhibit AG 1-21). In response to Record Request AG-4, the Company provided the recalculations of the SAIDI/SAIFI performance data and resulting benchmarks and penalties for Commonwealth (Exhibit NSTAR-3 (supplement)). Also, the change in terminology did not affect the Cambridge SAIDI/SAIFI benchmark calculations because, historically, the service territory was treated as a single service area (id.)

Second, in the Company's October 29, 2001 filing, abandoned calls were excluded from the "Call Answer Time" provided to the Department. In response to record requests issued during the evidentiary hearing in this case, the Company recalculated the historical benchmarks for "Call Answer Time" to include all abandoned calls for each of the NSTAR companies for the years that data is available on the number of abandoned calls (RR-AG-8). Specifically, the Company has revised its benchmark calculations to include abandoned calls since 1995 for Boston Edison, since 1997 for Commonwealth and Cambridge and NSTAR Gas since 1999 (id.).

Accordingly, the record shows that NSTAR has calculated benchmarks consistent with the Department's methodology for all measures. Specifically, the record shows that the benchmarks and standard deviations for each performance year, for each NSTAR company, are consistent with the Department's guidelines. Exhibit NSTAR-3 (supplement) sets forth the Company's historical benchmarks and standard deviations, reflecting the changes associated with the terminology change for SAIDI/SAIFI statistics (for Commonwealth) and the inclusion of abandoned calls in the Call Answering performance data and benchmarks (for all four NSTAR companies).

C. The Company Has Accurately Calculated Penalties and Offsets In Accordance with the D.T.E. 99-84 Penalty Mechanism

In D.T.E. 99-84, the Department established eight service-quality performance measures that are subject to the penalty provisions set forth in Section VII of the D.T.E. 99-84 guidelines. Gas and electric companies are required to compare annual performance data to the historical benchmarks for the purpose of calculating penalties or offsets in accordance with the Department's penalty formula (D.T.E. Guidelines, Section VII.A). As requested in the August 22, 2001 letter from General Counsel Afonso, the Company's October 29, 2001 filing included a calculation of credits and penalties for the two reporting periods ending August 31, 2001. The

record in this proceeding shows that NSTAR has met this requirement and that the penalties are accurately calculated.

With respect to the calculation of penalties for the second reporting period (September 1, 2000 through August 31, 2001), the record reflects that NSTAR made corrections to the penalty calculations filed on October 29, 2001, for the SAIDI/SAIFI and Call Answering performance measures. For SAIDI/SAIFI, the Company determined that the SAIDI/SAIFI performance data for 2001 reflected two types of errors: (1) that Momentary Outages were not excluded from the SAIDI/SAIFI data as provided by Section V.D of the D.T.E. 99-84 guidelines; and (2) that certain outage events that should have been included in the statistics were inadvertently excluded from the penalty calculation (RR-AG-15).¹⁵ The Company recalculated the penalties for the SAIDI/SAIFI measures to correct for these errors in the 2001 performance data, with the net result being a reduction in the penalties associated with these measures for the performance period ending August 31, 2001 (Exhibit NSTAR-3 (supplement), Appendix A).

With respect to the Call Answering measure, the record shows that abandoned calls were excluded from the call-answering performance data for both reporting periods (RR-AG-8). Consistent with the Company's revised calculation of historic benchmarks for the Call Answering Time measure, NTAR has recalculated its performance data to include all abandoned calls, as well as the associated penalty calculations (id.).

Thus, for the first reporting period (September 1, 1999 through August 31, 2000), the record shows that, for nearly every benchmark, NSTAR's performance was either in the penalty deadband or resulted in a credit for superior performance (Exhibit NSTAR-3 (supplement), Appendix A; RR-AG-8). Moreover, on an overall basis, for each individual company, the

¹⁵ The Company's responses to Record Requests AG-15 and UWUA-3 set forth an explanation of the factors underlying the incorrect calculations.

Company's performance produced a net credit (id.). For the second reporting period (September 1, 2000 through August 31, 2001), the record shows that the Company's performance results in the calculation of a net penalty (id.). A summary of the calculations set forth in Exhibit NSTAR-3 (supplement) is as follows:

	Sept. 1999 – Aug. 2000	Sept. 2000 – Aug. 2001
Boston Edison	(\$2,119,290)	\$3,207,141
Cambridge Electric	(\$81,464)	(\$131,117)
Commonwealth Electric	(\$162,959)	\$42,358
NSTAR Gas	(\$1,427,842)	(\$2,214,507)
Total Penalty		\$3,249,499

Thus, the record demonstrates that the NSTAR's calculation of performance credits and penalties for the two post-merger reporting periods are accurate and consistent with the Department's D.T.E. 99-84 guidelines. Accordingly, the Department should approve the Company's calculations as filed.

D. It Is Reasonable and Appropriate for the Department to Offset the Total Penalty Calculation By the Total Claims Paid by the Company to Customers

As indicated in the October 29, 2001 filing, NSTAR voluntarily initiated a claims program through which the Company made direct payments to approximately 2,551 customers who were affected by certain severe summer outages (Exhibit DTE 1-5; RR-AG-16).¹⁶ Specifically, customers were given the opportunity to be reimbursed for actual losses demonstrated to have resulted from a non-storm-related outage with a duration in excess of 12

¹⁶ The Supreme Judicial Court has previously held that an electric company is not liable by negligence or contract law for damages caused by an electric outage because (1) purely economic losses are not recoverable in tort and strict liability actions in the absence of personal injury or property damage; and (2) the extensive regulation of the Company's rates and practices removes the furnishing of electricity from the realm of contract law. FMR Corporation v. Boston Edison Company, 415 Mass. 393 (1993).

hours (Exh. NSTAR-2, at 7; RR-UWUA-1). The record shows that to date, the Company has paid out approximately \$725,633 in claims,¹⁷ and is holding in reserve approximately \$220,661 in payment for claims that have been made, but have not yet been validated (Exhibit DTE 1-5).

The record also shows that there is no feasible method of fairly targeting one-time credits or direct payments to only those customers specifically affected by the outages aside from the Company's direct-payment program (Exhibit DTE 1-4). During the summer of 2001 customers were experiencing significant inconvenience and experiencing losses as a result of certain extended non-storm related power outages (i.e., outages related to mechanical failures, staffing or operational problems) (Exhibit D.T.E. 1-6). In lieu of an SQI-related billing credit, which could not be specifically targeted to affected customers, the Company instituted a claims program to provide immediate relief in the form of a direct payment to customers who could demonstrate they incurred losses as a direct result of these extended outages (id.).

The rationale underlying this direct-payment program was to enable the Company to target penalty payments to those customers who could demonstrate power outage related losses and to provide that remedy in an expeditious fashion so that customers could replace food or inventory that was lost as a result of the outages (id.). As a result of this program, the Company was able to distribute penalty payments in a manner that provided direct relief to those customers who were specifically affected by the power outages. Since the penalty amount calculated in this proceeding exceeds the amount distributed in direct payments made to customers under the claims program, the Company has proposed to refund this additional penalty payment to all Boston Edison customers through a one-time billing credit. In light of the Company's efforts to provide those customers who were directly affected by the more severe outages, the Department

¹⁷ NSTAR's response to Exhibit DTE 1-5 contains a typographical error in the total amount of claims paid of \$752,632. The correct figure is \$725,632.

should offset the calculated penalty of \$3,249,499 by that amount that the Company has actually paid to customers as of January 31, 2002, or approximately \$725,633 (Exhibit DTE 1-5).

III. THERE IS NO BASIS FOR THE DEPARTMENT TO GRANT THE RELIEF SOUGHT BY THE ATTORNEY GENERAL AND THE DIVISION OF ENERGY RESOURCES

On January 30, 2002, the Attorney General and DOER filed joint comments at the Department with reference to three open dockets: D.T.E. 99-19, D.T.E. 01-65, and this docket, D.T.E. 01-71A. In these comments, the Attorney General and DOER suggested that the Department should impose the “maximum statutory service quality penalty allowable of \$22.5 million for the period September 1, 1999 to August 31, 2001” (Attorney General/DOER Comments at 2). The Attorney General and DOER state that this amount represents “the Maximum Penalty Amount according to the Company’s own calculation” (*id.* at 2, fn.2). The Department should reject the claims of the Attorney General and DOER as patently unfounded and unreasonable.

The Attorney General and DOER cite to the Company’s penalty calculations, which are set forth in Exhibit NSTAR-3 (supplement), Attachment B, at 1. However, there is simply no basis within the context of the service-quality program established by the Department upon which such a penalty could be levied. The \$22.5 million penalty proposed by the Attorney General and DOER represents the sum of the maximum allowable penalty (based on 2 percent of distribution and transmission revenues) that would apply if Boston Edison were to underperform by two standard deviations on all measures for both the first and second reporting periods (i.e., incurring a maximum penalty in 2000 of \$10,806,310, plus a maximum penalty of \$11,756,385 in 2001) (Exhibit NSTAR-3 (supplement)). The record in this proceeding shows that Boston Edison’s performance, for the period ending August 31, 2000, met or exceeded

every benchmark in every performance category, resulting in a net credit of (\$2,119,290) (Exh. NSTAR-3 (supplement), Appendix B at 1). For the second reporting period, ending August 31, 2001, record evidence reflects the calculation of a net penalty of \$3,249,499 (\$3,207,141 for Boston Edison and \$42,358 for Commonwealth Electric) (id.). The Attorney General and DOER have not presented any evidence to contest or contradict these calculations or any other calculations performed by the Company with respect to the establishment of historical benchmarks or the computation of net penalties under the Department's formula. Accordingly, there is no basis to reject the Company's calculations, or in the alternative, to accept the claims of the Attorney General and DOER.

Over the course of the past three years, the Department has conducted a comprehensive investigation into the establishment of service-quality standards. Although the Attorney General and DOER participated in that proceeding and were given ample opportunity to comment on any and all aspects of the service-quality program under development in the D.T.E. 99-84 docket, the Attorney General and DOER are now asking the Department to put aside the service-quality guidelines and levy a penalty based solely on a finding of "imprudence."¹⁸ However, the Department has consistently recognized that its authority to levy penalties is granted by G.L. c. 164, § 1E, which provides for the establishment of service-quality plans in the context of

¹⁸ As stated above, the Company respond to this and related issues raised by the Attorney General and DOER in the context of D.T.E. 01-65.

performance-based ratemaking schemes.¹⁹ See e.g., D.T.E. 99-84, at 1. To that end, G.L. c. 164, § 1E(c) states that “the department shall be authorized to levy a penalty against any distribution, transmission or gas company which fails to meet the [Department’s] service quality standards.” Therefore, the efforts of the Attorney General and DOER to take the calculation of the service-quality penalty outside of the context of the Department’s service quality standards, leaves the Department with no legal basis for assessing financial penalties in relation to the Company’s service-quality performance. Accordingly, there is no basis for the Department to assess the penalty proposed by the Attorney General and DOER in this proceeding.

I. CONCLUSION

Over the past three years, the Department has consistently worked to establish service-quality guidelines that would apply, on a generic basis, to all gas and electric utilities in the state. NSTAR has complied with each and every directive of the Department with respect to the application of the D.T.E. 99-84 guidelines to the performance data for the September 1, 1999 through August 31, 2001 time period, including: (1) the reporting of historical data for each measure; (2) the calculation of performance benchmarks based on 10 years worth of historical data, or the maximum number of years of data available, so long as three years were available; and (3) the comparison of annual performance data to the established benchmarks for the purpose of calculating penalties or offsets in accordance with the Department’s penalty formula.

¹⁹ In this proceeding, the Company has complied with the directives of the Department to file performance statistics for the two post merger performance periods notwithstanding the Company’s legal objections to the application of penalties outside the context of a performance-based rate plan. Although the Company believes that G.L. c. 164, § 1E is not applicable to the establishment of a service-quality plan in the context of a merger, the Company has not contested the application of the Department’s penalty methodology in this proceeding. NSTAR shares the Department’s objective to ensure high-quality service to customers and recognizes that the Department’s guidelines have sought to create a service quality structure intended to further that objective. Accordingly, without waiving any legal arguments or rights, NSTAR will provide payments to customers in the amount calculated in this proceeding in accordance with the Department’s D.T.E. 99-84 methodology.

As discussed below, the record in this proceeding shows that NSTAR has met each of these requirements.

In addition, the record shows that the application of the Department's service-quality guidelines to the two post-merger performance periods ending August 31, 2000 and August 31, 2001 results in a total penalty of \$3,207,141 million for Boston Edison of which the Company has made direct payments totaling approximately \$725,633 to Boston Edison customers specifically affected by the outages. The remaining \$2,481,508 million penalty should be credited to Boston Edison customers in a manner consistent with the methodology proposed by the Company. As a result, NSTAR will have paid total penalties \$3,249,499 (\$3,207,141 for Boston Edison, plus an additional \$42,358 for Commonwealth Electric).

Accordingly, the Department should find that the calculation of penalties is consistent with the service-quality guidelines established in D.T.E. 99-84.

Respectfully submitted,

NSTAR ELECTRIC COMPANY

By its attorneys,

Cheryl M. Kimball, Esq.
Robert J. Keegan, Esq.
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, MA 02110
(617) 951-1400

Dated: February 6, 2002